1952

Pleasant Grove City v. Laurence Crease, Retta Crease, Richard L. Bezzant, Angelina Bezzant : Brief of Respondent on Appeal

Utah Supreme Court

J. Albert Page; I. E. Brockbank; Attorneys for Respondent;

7874

In the Supreme Court of the State of Utah

PLEASANT GROVE CITY,
a municipal corporation,
Plaintiff and Respondent,

vs.

LAURENCE CREASE and
RETTA CREASE, his wife;
RICHARD L. BEZZANT and
ANGELINA BEZZANT, his wife,
Defendants and Appellants.

CASE
NO. 7874

RESPONDENT'S BRIEF ON APPEAL

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LAURENCE CREASE and
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Defendants and Appellants.

CASE
NO. 7874

RESPONDENT'S BRIEF ON APPEAL

STATEMENT OF CASE

This action was brought by Pleasant Grove City as plaintiff, and the follwing defendants: Laurence Crease and Retta S. Crease, his wife; Richard L. Bezzant and Angelina Bezzant, his wife; S. Duane Harper and Chloe Harper, his wife; Ray W. Fenton and LaVerda Fenton, his wife; Thomas Fenton and Ethel Fenton, his wife; Hoyt Shields and Cleone B. Shields, his wife; Paul M. Jones and Marie B. Jones, his wife; Edna B. West Yates and Thomas Yates, her husband; David F. West; Varian LaVearl West and

Mrs. Varian LaVearl West, his wife; State Savings & Loan Association, a corporation; Bank of Pleasant Grove, a corporation; and State Bank of Lehi, a corporation.

Defendants were the owners of land abutting along the east side and along the west side of the following described property:

> Commencing 32.8 feet West and 31.1 feet South of the intersection Monument at Fourth East and Third South Streets, Official Plat of Pleasant Grove City (Robert L. Wilson Plat) thence South 733.00 feet; thence East 66.00 feet; thence North 733.00 feet; thence West 66.00 feet to the place of beginning.

That the defaults of all of the defendants were duly entered except Laurence Crease and Retta S. Crease, his wife, and Richard L. Bezzant and Angelina Bezzant, his wife.

That all of said defendants received their title to the lands abutting on the east side and abutting on the west side of the above described lands from the Mayor of Pleasant Grove City.

That demand has been made upon the defendants that they surrender possession of the lands above described to the plaintiff (File 4-6).

That the defendants, Richard L. Bezzant and Angelina Bezzant, his wife, filed an Answer and Counterclaim on the 27th day of October, 1950 (File 7-11).

That the defendants, Laurence Crease and Retta S. Crease, his wife, filed an Answer and Counterclaim on the 27th day of October, 1950. (File 13-17).

Replies of the plaintiff were duly made to the Answer and Counterclaims of the defendants, Crease and Bezzant (File 19-20).

That on the 3rd day of July, 1951, a Memorandum Decision was filed (File 21).

That on the 27th day of August, 1951, the Court made its Findings of Fact and Conclusions of Law (File 22-23).

The lower court entered judgment in the matter on the 27th day of August, 1951 (File 33-34).

The defendants, Crease and Bezzant, filed a Motion to Modify Conclusions of Law and Judgment on the 29th day of August, 1951 (File 35).

The plaintiff filed a Motion for a New Trial on the 6th day of September, 1951 File 36).

On May 21, 1951, the court made its ruling, which was as follows:

> In this matter the defendants' Motion for a New Trial is denied. Plaintiff's Motion to Modify Conclusions and judgment is denied. (File 37).

On or about the 30th day of June, 1952, the court changed its ruling and made the following Order:

"IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

PLEASANT GROVE CITY,
a Municipal Corp.,
Plaintiff
vs.
LAURENCE CREASE, ET AL,
Defendants

MINUTE ENTRY
CASE NUMBER 16,253
DATED JUNE 30, 1952
R. L. TUCKETT, Judge

RULING

In this matter the Plaintiff's motion for a new trial is denied. The Defendants' motion to modify the Conclusions of Law and Judgment is denied.

(Signed) R. L. TUCKETT"

The defendants appealed from the original incorrect order on the 21st day of May, 1952 (File 38).

The Statement of Points was filed by the defendants on the 27th day of June, 1952 (File 41).

Plaintiff appealed from the Order as set out above on or about the 23rd day of July, 1952 (File 43).

Defendants filed their Cross-Appeal Statement of Points by Way Thereof on the 28th day of July, 1952 (File 47-48).

The defendants and appellants knew that the order they appealed from was wrong and incorrect, as they had a copy of the same in their office. As soon as the plaintiff and respondent found that the Order was erroneous they appealed to the court and he made a corrected Order on the 30th day of June, 1952. The plaintiff appealed from this corrected Order within time, and therefore the appeal was proper.

Respondents feel that the case should be heard on its merits on the appeal of the plaintiffs and the cross-appeal of the defendants. The Briefs as submitted herein should be considered, but the case should be heard on its merits to the same extent and effect as though the plaintiff's appeal as filed herein was proper and in time.

STATEMENT OF FACTS

The property involved in this action is the 2.00 rods east of "Lot 2, Block 7, Pleasant Grove City Survey" and the 2.00 rods west of "Lot 5, Block 8, Pleasant Grove City Survey."

The above property was and is platted as a street,, together with the property owned by the defendants whose default has been entered, and connects Third South Street and the street running east and west and parallel to the said Third South Street and south thereof.

The land in dispute is designated as a street on the map of Pleasant Grove City, and has been so designated for many, many years prior to this action being brought.

The Bezzants, and their predecessors in interest, received title to Lot 2, Block 7, Plat "A" Pleasant Grove City Survey. The 2.00 rods east of said Lot 2, Block 7 was not included in said deed, but only Lot 2, Block 7, Pleasant Grove City Survey, was conveyed. The Creases, and their predecessors in interest, received title to Lot 5, Block 8, Plat "A", Pleasant Grove City Survey. The 2.00 rods west of said Lot 5 was not includeed in the said deed, but only Lot 5, Block 8, Pleasant Grove City Survey. The titles to Lot 2, Block 7, and Lot 5, Block 8, were conveyed to the predecessors in interest of the said Creases and Bezzants by the Mayor of Pleasant Grove City, but not the land in dispute.

On the 2.00 rods claimed by the Creases by adverse possession or by estoppel were some improvements. There were no improvements on the 2.00 rods claimed by the Bezzants, by adverse possession or by estoppel. The Creases' home is located on Lot 5, Block 8, and is not located on the property in dispute, but is located some feet east of there. The Bezzants' home is located on Lot 2, Block 7, and is not located on the property in dispute, but is located some feet west of there.

The Findings of Fact, Conclusions of Law and Judgment were prepared by the defendants' attorneys, and were not submitted to the plaintiff and its attorneys for approval before signed by the Judge of the lower court.

QUESTION IN DISPUTE

The question to be decided by this Court is whether or not the defendants, through adverse possession or by estoppel, can obtain title to property which belonged to Pleasant Grove City, and was platted and designated as a street

It is admitted that the defendants, and their predecessors in interest, are now in possession of the property and have been for many years.

As a matter of law and equity, should the Court quiet the title in the defendants or should the Court have quieted title in the plaintiff.

ARGUMENT

1. CLAIM OF DEFENDANTS AND APPELLANTS

Appellants contend that since the court found that plaintiff city failed to establish its title and that defendants were in possession of property that the court should have quieted title in the defendants.

This assumes that possession only, without any title, is sufficient to justify a Decree Quieting Title.

The effect of the trial court's Findings and Decree refusing to quiet their title and dismissing their Counterclaims, was to determine that they had no title to the premises. Thus, it having been determined that they had no title, it was not in error to refuse to quiet title in them.

The case of Pender v. Bird, 224 Pac. 2d 1057, cited by appellants is distinguishable. In that case the defendant, Bird, was in possession and he also had a tax title, both from the county and the city, so it having been proved that the plaintiff had no title, the defendant was justified in having his tax title quieted.

The defendants obtained title to Lot 2, Block 7, and Lot 5, Block 8, but they did not at any time make any claim for the property between said lots, which is the property in dispute, and which was platted as a street.

II. STATUTORY PROVISIONS

This is not an ordinary action between private parties. The law governing such transactions does not apply in this particular case.

This is an action brought by Pleasant Grove City, a Municipal Corporation. The title of the defendants is determined by statute.

The statute is 104-2-13, U.C.A. 1943, and reads as follows:

> "104-2-13. Id. OF PUBLIC STREETS, ETC.
> No person shall be allowed to acquire any right or title in or to any lands held by any town, city or county, or the corporate authorities thereof, designated for public use as streets, lanes, avenues, alleys, parks or public squares or for any other public purpose, by adverse possession thereof for any length of time whatsoever, unless it shall affirmatively appear that such town or city or county or the corporate authorities have sold, or otherwise disposed of, and conveyed such real estate to a purchaser for a valuable consideration and that for more than seven years subsequent to such conveyance the purchaser, his grantees or successors in interest, have been in the exclusive, continuous and adverse possession of such real estate; in which case an adverse title may be acquired."

It will be seen from this statute that no person can acquire any right or title in or to any lands held by any municipal corporation which has been designated as streets.

The court found that the defendants had not acquired title to the lands of which they were in possession and dismissed their counterclaim. In other words, the court by its judgment (File 34) held that the defendants had not acquired any title to the property in dispute. This part of the judgment is as follows:

> "2. That plaintiff be, and it is hereby awarded judgment of "No Cause of Action" on the purported cause of action set out in defendants' counterclaim, and that said counterclaims be, and the same are hereby dismissed."

In order to make such a judgment, the court must have found that the defendants had not acquired title, for two reasons: (1) The Statute was against them, and (2) the city was not estopped under the law and equity.

The note under the statute above quoted states very definitely that such a statute had been on our statute books since 1876, Chaper 4, Section 1174. Similar provisions have been in our statutes since 1867.

This is supported by the case of Giauque v. Salt Lake City, 42 Utah 89, at Page 94, 129 Pac. 429. This matter is also discussed in the case of Wall v. Salt Lake City, 50 Utah 593, 168 Pac. 766; Hall v. North Ogden City, 109 Utah 304, 166 Pac. 2d 221; Tooele City v. Elkington, 100 Utah 485, 116 Pac. 2d 406.

In the last case above mentioned, the defendants claimed that the city had deeded them the property, and thereby had relinquished any right which the city might have had in and to the property. The defendants in this case have not claimed at any time that the city deeded them the property. The title they had is from other people or

they must acquire title to the property by estoppel against the city.

The defendants are not only bound by the statute, but they are also bound by the records in this case. They knew that they did not have title to the property in dispute. The city had the title, and it had not parted with this title to the defendants or their predecessors. Their abstract showed this and they also knew this from the public records. This matter is discussed in 19 Am. Jur. Page 770, Section 116 and the cases cited in the notes.

We have set forth the facts that show conclusively that the defendants do not have title by virtue of any deed issued by the municipality, which fact is definitely established by their abstract and the public records. This question is discussed very carefully in 19 Am. Jur. Page 603, Sections 5 to 32 inclusive.

We think the cases cited by defendants, except as referred to above, are not in point. The defendants have mixed up the right of the defendants with private parties, and do not seem to recognize that this is an attempt on the part of the defendants to establish title to the property as against a municipal corporation, to-wit: Pleasant Grove City.

Appellants cite the case of West v. Child, 8 Utah 223, and argue that it is, at least by inference, authority for the proposition that where one is in the possession of property within a townsite prior to entry by the Mayor and continues to retain possession after entry for the statutory period, that gives him title by adverse possession. This case is not in point, and is not authority for such proposition even by inference, for the reason that in the West case the dispnte was between individuals, and the property involved was not platted street property; whereas, in this case,

the defendants seek adverse title to such platted street property against the city. All the West case holds is that one in adverse possession of property within a townsite is entitled to the benefits of the townsite laws and the Legislative enactments of the territory passed to carry out the terms thereof.

The Townsite Law of March 2, 1867, and the Legislative enactments made to carry out the provisions thereof gave occupants of land within the townsite the right to, and also required of them, that they establish their claims through the Probate Court and get deeds to their claimed premises from the Mayor or Probate Judge. It also provided that if said claimants failed to make such claims within a certain time, as set out in the law, that their claims would be forever barred.

III. ADVERSE POSSESSION

The appellants have mixed up adverse possession with the question of estoppel in their brief. The law, however, is clear that the defendants can gain no title by adverse possession as against a municipality. This matter is governed by the statutes, and the statutes have several times been construed by our Supreme Court in the cases cited above.

IV. EQUITABLE ESTOPPEL OR ESTOPPEL IN PAIS

The only ground on which the defendants could claim title would be on the ground of equitable estoppel or estoppel in pais. It seems from the brief of the appellants that this is the ground on which they claim title to the property. They have devoted practically sixteen pages of their brief to this question.

Equitable estoppel is defined by 21 Corpus Juris, Section 116, Page 1113, as follows:

> "Equitable estoppel is sometimes called Estoppel in Pais Estoppel by Representation or Estoppel by Conduct. It is defined as the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might perhaps have otherwise existed, either of property, of contract, or of remedy, as against another person who in good faith relied upon such conduct, and has been led thereby to change his position for the worse, and who on his part acquires some corresponding right, either of contract or of remedy. This estoppel arises when one by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. It consists in holding for truth a representation acted upon when the person who made it seeks to deny its truth."

This is also discussed in 19 Am. Jur. Sections 33, 34 and 35, Page 633-636.

It will be observed that the essential elements of equitable estoppel or estoppel in pais ars as follows:

(1) There must exist a false representation or concealment of material facts.

(2) Such representation must have been made with knowledge actual or constructive of the facts.

(3) The party to whom it was made must have been without knowledge or the means of knowledge of the real facts.

(4) It must have been made with the intention that it should be acted upon, and the party to whom it was made must have relied on it or acted upon it to his prejudice.

This is discussed in 21 C. J., Section 122, Page 1119; also in 19 Am. Jur., Sections 42 to 52.

IMPROVEMENTS

The defendants, and their predecessors in interest, having known that they did not have title to the disputed area, made no permanent improvements thereon, and any improvements they have made was voluntary on their part, knowing as they did know at the time that they did not have title to the disputed property. The defendants, and their predecessors in interest, did not build any homes on the disputed area, but it seems that they did make some improvements, especially on the 2.00 rods west of Lot 5, Block 8. Therefore, the homes they built were built with full knowledge that they did not have title to the disputed area. Any improvements placed on the disputed area were placed there voluntarily and with the knowledge that they did not have title thereto. These improvements are minor and do not consist of any substantial buildings, but consist mainly of barns and chicken coops. These improvements can easily be moved onto property to which the defendants, and their predecessors in interest have title. This is discussed in 21 C. J. Section 197, Page 1197 and notes. This section cites the Wall case herein referred to, and reads as follows:

"ACQUIESCENCE IN IMPROVEMENTS

The doctrine of equitable estoppel may be invoked against the public, a municipality or other public agency, where it has acquiesced in the making on its streets by one acting in good faith or such valuable and permanent improvements that it would be unjust and inequitable to allow it to assert title to the property on which the improvements were made. However, to create an estoppel the essential elements of an estoppel in pais must be present. It is essential that the improvements should have been induced by the acts of the municipality, and it has been held that a claim of irrevocable right in a street or public place cannot be predicated upon the ground alone that the public officers saw improvements in course of construction and did not object. Something more than mere possession of municipal property on the part of private parties must be shown. Improvements of a trivial or insignificant character cannot be made the basis of an estoppel."

TAXES

The question of collection of general taxes which is discussed in 21 C. J. Section 198, Page 1199 reads as follows:

"It is generally held that a state or municipality is not estopped from subsequently claiming title to property for the benefit of the public, by an unauthorized levy and collection of taxes on such property, or even by a levy and sale of such property for taxes. So also unauthorized assessment for public improvements will not estop the municipality from setting up a claim of title to the land against which the assessments were made."

A California case, Gervasoni vs. City of Petaluma, 189 Cal. 306, 208 Pac. 120, holds that assessment and collection

of taxes by a city on certain lands does not estop the city from later claiming such assessed land to be a street.

A Colorado case, Eisenhart v. City & County of Denver, 150 Pac. 729, reaffirmed 170 Pac. 1179, holds that in a suit against the city to recover lands, the fact that such lands had been taxed did not estop the city from claiming title for the benefit of the public.

To the same effect is Hecker v. City & County of Denver, 252 Pac. 808.

On this question of assessment of taxes many cases are authority for the view that acts of the taxing officials, even if they are officers of the city, in assessing or collecting taxes upon premises that actually constitute a street, although privately claimed and occupied, are beyond their authority and jurisdiction, and cannot bind the city nor estop it from asserting its right to claim and open such street.

Collins v. Wayland, 59 Arizona 340, 127 Pac. 2d 716.

Boise City vs. Hon, 14 Idaho 272; 94 Pac. 167.

Plumb v. Grand Rapids, 81 Michigan 381; 45 N.W. 1024.

In the latter case the court pointed out that under the law all assessments and even the sale of the property in question for taxes were absolutely void if title was in the city, since no taxing officer could lawfully subject the city property to sale for taxation. This case involved a special improvement assessment made by the city. Our Pleasant Grove City case involves only general property taxes which, as the Court knows, were actually assessed by the county officials. The reason these lands now in dispute were assessed by the county against the defendants was that these

defendants placed on record deeds and conveyances which included a description of the street property, although they actually had no legal title to the same. This clearly appears from their two abstracts placed in evidence. In other words, the taxes were assessed and paid by them pursuant to their own acts. What actually happened, as is well known, was that each year the city determined its rate of tax or tax levy and this was certified to the county officials, who then applied the levy to all taxable property within the city limits. There is no finding whatever that Pleasant Grove City took any affirmative action leading directly or indirectly to the levy of taxes on this particular property on which defendants could or had any right to rely or on which they in fact did rely.

The following cases have been decided by the Supreme Court, and we think are in point, and should be read and studied by this Court in order to determine the relationship of the city to this property and the rights of the defendants to have this Court determine that they have title to the disputed area. The cases are as follows:

Wall vs. Salt Lake City, 50 Utah 593; 168 Pac. 766.
Tooele City v. Elkington, 116 Pac. 2d. 406.
Hall v. North Ogden City, 166 Pac. 2d 221.

There is one federal case which we think would throw some light on the subject before this Court, and, therefore, we refer to it because we think it will benefit the Court in arriving at a proper decision in this matter. This case is: Provo City vs. Denver & Rio Grande Railroad Company, 156 Fed 2d 710, rendered in Circuit Court of Appeals for 10th Circuit and in which Writ of Certiorari was denied by the U. S. Supreme Court.

In reading these cases, we are sure the Court will find that the facts in the case of Pleasant Grove City are entirely different and do not meet the requirments of an equitable estoppel against the city, and therefore the defendants should not prevail in their appeal.

We quote from the Federal Court case, which stated as follows:

> "These three cases (referring to the Wall v. Salt Lake City, Tooele City v. Elkington, and Hall v. North Ogden City) considered in their composite effect seem to make it clear that in Utah, the principle of estoppel in pais is to be applied very narrowly to a city in respect of its right to re-open a street for use as a public thoroughfare, and only in cases where the city acted within the ambit of its legal authority but in an irregular way."

We are certain that the Provo City case presents a much stronger rule for estoppel in pais than the Pleasant Grove City case, now before this Court. There is nothing in the brief of the appellants or in the case itself to indicate that the city has taken any action whatever regarding the property in dispute. It has, of course, accepted general taxes, but these have been levied by the county and paid in bulk to the city, and the city did not have any knowledge whatsoever that this particular piece of property was being assessed.

The disputed area could not be assessed, under the law, and therefore any assessment of a general tax is void as against the city.

The ground upon which the appellant can therefore rely is upon adverse possession, and this does not operate

against a city, regardless of how long adverse possession may continue.

CONCLUSION

A private individual, under our statutes, and under the laws as established by the courts, can obtain title against a municipality only in two ways:

(1) Deed from the city.

(2) Equitable estoppel or estoppel in pais.

It is evident from the appellants' brief and pleadings and cases cited herein that the defendants do not and cannot claim title by either one of the two methods set forth above.

It is, therefore, the contention of respondent that the appellants cannot prevail in this action, and the decision of this Court should be against the appellants, and each of them, and in favor of the respondent.

Respectfully submitted,

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